



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Landau, et al.) Examiner: A. Rudy
)
Serial No.: 09/595,528) Art Unit: 3627
)
Filed: June 16, 2000)
)

For: **ORDER AND ACCOUNTING METHOD AND SYSTEM FOR SERVICES
PROVIDED VIA AN INTERACTIVE COMMUNICATION NETWORK**

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on: March 7, 2007.
Signature: Carol Prentice
Carol Prentice

DECLARATION UNDER 37 C.F.R. §1.131

We, Peter D. Fante and Scott E. Landau, hereby declare as follows:

1. We are the applicants in the above-identified U.S. patent application, and the inventors of the invention disclosed and claimed therein.
2. Beginning at a time before December 1, 1999, we conceived of a method and system for providing electronic commerce and accounting services to organizations and service providers for offerings ordered by members of the organizations and delivered by the service providers.
3. We were diligent in our efforts to complete the invention from a time prior to December 1, 1999 up until June 16, 2000, the date of filing of the present application, and these efforts were continuous.

4. As evidence of our conception of the invention prior to December 1, 1999, and our due diligence from a time prior to December 1, 1999 up until the June 16, 2000 date of filing of the present application, we are submitting herewith as **EXHIBIT 1** a true and accurate copy of a NYORDER.COM Business Plan which we began drafting prior to December 1, 1999. The NYORDER.COM Business Plan at **EXHIBIT 1** was based on substantially similar prior drafts which were prepared in advance of December 1, 1999. These prior drafts are attached at **EXHIBIT 2**.

5. The NYORDER.COM Business Plans at **EXHIBITS 1 and 2** provide a detailed description of the invention. In particular, the NYORDER.COM Business Plan at **EXHIBIT 1** describes the invention in connection with an online ordering system for takeout food. The "Overview" section of the NYORDER.COM Business Plan details the provision of online ordering services by allowing customers to browse menus from various restaurants by logging on to a web site. The customer can then place the order online with the NYORDER.COM, which acts as an intermediary and forwards the order on to the restaurant (e.g., via fax or email). The restaurant will then process the order and deliver the food to the customer. The billing information is entered into the web site at the time the order is placed. The customer is then provided with an invoice for the orders placed from NYORDER.COM (see, e.g., first full paragraph on page 2 of NYORDER.COM Business Plan at **EXHIBIT 1**). The NYORDER.COM Business Plans at **EXHIBIT 2** include similar disclosures

6. The **EXHIBIT 1** NYORDER.COM Business Plan includes an Exhibit A, which contains descriptions of various web pages to be used in connection with the web site of the present invention. For example, the description for SCREEN ONE includes the input information required to identify the customer and/or the customer account, as well as input information for the address of the customer so that nearby restaurants that deliver to that area can be accessed. The description for SCREEN TWO includes input information for the order the customer is placing, that customer's past order history, and the time of delivery of the order. The description

for SCREEN THREE includes the results from the input of SCREEN TWO, including a list of restaurants broken down by food type, restaurant contact information, credit cards accepted, and provides the customer with an option to select one of the listed restaurants. The description for SCREEN FOUR includes the selected restaurant's menu with options for the customer to select menu items, as well as an indicator of the order's total cost. The description for SCREEN FIVE includes inputs for entry of payment or account information, instructions for delivery, information screen with restaurant contact information. In addition, the description for this screen indicates that after the payment/account information is approved, the order and payment information will be sent to the restaurant. The PROGRAM/DESIGN notes for SCREEN FIVE indicate that an accounting of food ordering activity (invoice) is to be provided to the customer or customer's company and that this accounting information can be organized in many different ways, by client, by restaurant, by client reference number, etc. This note also indicates that bills can be sent to the client on behalf of the restaurant.

7. As further evidence of conception of our idea and our due diligence, attached at **EXHIBIT 3** is a copy of a certified copy of the articles of incorporation for NYORDER.COM, LLC, which were executed on October 6, 1999. The copy of the articles of incorporation attached at **EXHIBIT 3** bears a date stamp from the State of New York Department of State of October 14, 1999. It should be noted that the name of the company has changed several times over the years and is now Osmio, Incorporated, the assignee of the present invention.

8. As further evidence of conception of our idea and our due diligence, attached at **EXHIBIT 4** is a copy of an "Abbreviated Proposal" for work to be performed for NYORDER.COM by JPC Web Inc. a web site development firm. The Abbreviated Proposal at **EXHIBIT 4** was prepared by JPC Web Inc. prior to December 1999 and provides cost estimates for constructing a web site to implement the system described in the NYORDER Business Plan at **EXHIBIT 1**, including the web site screens described in Exhibit A to the Business Plan.

9. Certain dates which were printed on the various Exhibits have been blocked out upon the advice of the Assignee's patent counsel in order to avoid disclosing the actual date of conception of our invention. The printed dates on the originals, and the dates on which the documents were prepared, are prior to December 1, 1999. In addition, certain information that does not pertain to the invention has been redacted from the documents, where indicated thereon.

10. The NYODER.COM Business Plan at **EXHIBIT 1** subsequently went through several rewrites. Once this business plan was finalized, we began searching for patent counsel to prepare and file a patent application for our invention. We initially contacted attorney Barry R. Lipsitz in early March of 2000 regarding retaining Attorney Lipsitz as our patent counsel in connection with the present invention. We subsequently decided to retain attorney Lipsitz as patent counsel on or about March 17, 2000, as evidenced by the March 17, 2000 engagement letter from attorney Lipsitz attached as **EXHIBIT 5**, which **EXHIBIT 5** is attached hereto without waiving the attorney-client privilege. A copy of the finalized Business Plan was provided to attorney Lipsitz subsequent to March 17, 2000.

11. We were subsequently engaged in regular communications with the attorneys at Mr. Lipsitz' office, including by telephone, email, facsimile and mail, to discuss various details of the invention in order to assist them in preparing the present application.

12. The attorneys at Mr. Lipsitz' office prepared an initial draft copy of claims for the patent application which was sent to us for review and comment by letter dated April 17, 2000, **EXHIBIT 6**, which **EXHIBIT 6** is attached hereto without waiving the attorney-client privilege. Subsequently, we were in communication with Mr. Lipsitz' office to discuss revisions which should be made to the draft claims of the application.

13. The attorneys at Mr. Lipsitz' office prepared an initial draft of the patent application which was sent to us for review and comment on May 8, 2000, as evidenced by the letter dated May 8,

2000 attached at **EXHIBIT 7**, which **EXHIBIT 7** is attached hereto without waiving the attorney-client privilege. Subsequently, we were in communication with Mr. Lipsitz' office to discuss revisions which should be made to the draft claims of the application.

14. We were subsequently sent a finalized copy of the patent application from Mr. Lipsitz' office on May 11, 2000, as evidenced by the letter attached at **EXHIBIT 8**, which **EXHIBIT 8** is attached hereto without waiving the attorney-client privilege. We subsequently approved the finalized copy for filing. We signed the Declaration on June 8, 2000 and the signed Declaration was forwarded to Mr. Lipsitz' office that same day. The application was then filed by Mr. Lipsitz' office on June 16, 2000.

15. All of the acts set forth above, including the conception and reduction to practice of our invention, took place in the United States.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that all statements made herein are made with the knowledge that the making of willfully false statements and the like is punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity this application or of any patent resulting therefrom.



Peter D. Fanto

Date: 3-6-07

Scott E. Landau

Date: _____

2000 attached at **EXHIBIT 7**, which **EXHIBIT 7** is attached hereto without waiving the attorney-client privilege. Subsequently, we were in communication with Mr. Lipsitz' office to discuss revisions which should be made to the draft claims of the application.


14. We were subsequently sent a finalized copy of the patent application from Mr. Lipsitz' office on May 11, 2000, as evidenced by the letter attached at **EXHIBIT 8**, which **EXHIBIT 8** is attached hereto without waiving the attorney-client privilege. We subsequently approved the finalized copy for filing. We signed the Declaration on June 8, 2000 and the signed Declaration was forwarded to Mr. Lipsitz' office that same day. The application was then filed by Mr. Lipsitz' office on June 16, 2000.

15. All of the acts set forth above, including the conception and reduction to practice of our invention, took place in the United States.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that all statements made herein are made with the knowledge that the making of willfully false statements and the like is punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity this application or of any patent resulting therefrom.

Peter D. Fante

Date: _____



Scott E. Landau

Date: 3/6/07